U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

Public Copy

FILE [redacted] Office: Vermont Service Center Date: JUN 8 2001
EAC 98 137 51252

IN RE: Petitioner:
Beneficiary: [redacted]

APPLICATION: Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(B)(ii) of the Immigration and Nationality Act, 8 U.S.C. 1154(a)(1)(B)(ii)

IN BEHALF OF PETITIONER: Self-represented

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center, who certified his decision to the Associate Commissioner, Examinations, for review. The district director's decision will be affirmed.

The petitioner is a native and citizen of Mexico who is seeking classification as a special immigrant pursuant to section 204(a)(1)(B)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1154(a)(1)(B)(ii), as the battered spouse of a lawful permanent resident of the United States.

The director determined that the petitioner failed to establish that she is the spouse of a citizen or lawful permanent resident of the United States. The director, therefore, denied the petition.

The applicant has provided no statement or additional evidence on notice of certification.

8 C.F.R. 204.2(c)(1), in effect at the time the self-petition was filed, states, in pertinent part, that:

> (i) A spouse may file a self-petition under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for his or her classification as an immigrant relative or as a preference immigrant if he or she:
>
> > (A) Is the spouse of a citizen or lawful permanent resident of the United States;
> >
> > (B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;
> >
> > (C) Is residing in the United States;
> >
> > (D) Has resided in the United States with the citizen or lawful permanent resident spouse;
> >
> > (E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage;
> >
> > (F) Is a person of good moral character;

(G) Is a person whose deportation (removal) would result in extreme hardship to himself, herself, or his or her child; and

(H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

The petition, Form I-360, shows that the petitioner entered the United States without inspection on or about July 20, 1995. The petitioner married her alleged lawful permanent resident spouse on [redacted] at [redacted]. On April 6, 1998, a self-petition was filed by the petitioner claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, her lawful permanent resident spouse during their marriage.

8 C.F.R. 204.2(c)(1)(A) provides that the abusive spouse must be a citizen of the United States or a lawful permanent resident of the United States when the petition is filed and when it is approved.

The director determined that the petitioner failed to establish that she is the spouse of a lawful permanent resident of the United States because her spouse was deported from the United States.

The director noted that the records of the Service reflects that the applicant's spouse, [redacted] was granted lawful permanent resident status (LAPR) in 1991 (December 1, 1990) and was assigned alien number [redacted] Based on the applicant's entry into the United States without inspection and for the sale of marijuana, on December 10, 1992, the applicant was issued an Order to Show Cause (Form I-221) under the name of [redacted] Because the Service was not aware that [redacted] had LAPR status, nor did he advise the arresting officer that he had LAPR status, he was assigned alien number [redacted]. An immigration judge ordered [redacted] removed from the United States, and on December 31, 1992, he was removed from the United States to Mexico. [redacted] subsequently reentered the United States using his alien registration card ([redacted]).

Mr. [redacted] lost his status as a lawful permanent resident of the United States when he was removed to Mexico on December 31, 1992 based on his entry into the United States without inspection and for trafficking in marijuana. Therefore, [redacted] was not a lawful permanent resident when he and the petitioner were married on [redacted], and when the self-petition was filed on April 6, 1998.

The petitioner, therefore, is ineligible for the benefit sought under the provisions of section 204(a)(1)(B)(ii) of the Act, and as provided in 8 C.F.R. 8 C.F.R. 204.2(c)(1)(i)(A). The decision of the director to deny the petition will be affirmed.

ORDER: The district director's decision is affirmed.